

# SANITARY CODE OF ERIE COUNTY

ERIE COUNTY DEPARTMENT OF HEALTH  
BUFFALO, NEW YORK

## INTRODUCTORY NOTE

Section 347, Title III of the Public Health Law of the State of New York, being Chapter 879 of the Laws of 1953 as amended, provides as follows:

6. Upon the establishment of a board of health for a county or part-county health district as provided in this article, it shall exercise all the powers and perform all duties of local boards of health as provided in this chapter, and such board of health may formulate, promulgate, adopt and publish rules, regulations, orders and direction for the security of life and health in the health district which shall not be inconsistent with the provisions of this chapter and the sanitary code. Such rules, regulations, orders and directions shall be known as the Sanitary Code of such Health District.

a. Every rule, regulation, order and direction adopted by a board of health shall state the date on which it takes effect, and a copy thereof signed by the county health commissioner or his deputy shall be filed as a public record in the department, in the county or part-county department of health and in the office of the county clerk and shall be published in such manner as the board of health may from time to time determine.

b. The county health commissioner or his deputy shall furnish certified copies of the sanitary code of the health district and its amendments for a fee of one dollar.

c. Nothing herein contained shall be construed to restrict the power of any city or any village to adopt and enforce additional ordinances or enforce existing ordinances relating to health and sanitation provided that such ordinances are not inconsistent with the provisions of this chapter or the sanitary code.

SANITARY CODE  
ERIE COUNTY  
DEPARTMENT OF HEALTH

ANTHONY J. BILLITTIER, IV, M.D., FACEP  
Commissioner of Health

THE SANITARY CODE OF THE ERIE COUNTY HEALTH DISTRICT

ADOPTED MAY 7, 1948 - EFFECTIVE JUNE 15, 1948

By the

ERIE COUNTY BOARD OF HEALTH

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TABLE OF CONTENTS

ARTICLE I  
DEFINITIONS AND GENERAL PROVISIONS

ARTICLE II  
COMMUNICABLE DISEASE  
(Deleted July 2000)

ARTICLE III  
MILK, CREAM AND MILK PRODUCTS  
(Deleted July 2000)

ARTICLE IV  
GENERAL SANITATION

ARTICLE IV-A  
SEWER USE REGULATIONS  
(Transferred to County Dept. of Environmental Quality Codes)

ARTICLE IV-B  
REGULATION OF INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

ARTICLE V  
WATER SUPPLIES  
(Deleted July 2000)

ARTICLE VI  
SWIMMING POOLS AND BATHING BEACHES  
(Deleted August 1993)

## ARTICLE I

### DEFINITIONS AND GENERAL PROVISIONS

#### Section 1: Title

The rules and regulations herein contained shall be known as the Sanitary  
Code of the Erie County Health District

#### Section 2: Definitions.

When used herein, unless otherwise expressly stated:

- (a) “Health district” shall mean the Erie County Health District  
established pursuant to the provision of Section 340 of the Public  
Health Law.
- (b) “Department of Health” shall mean the Board of Health of the Erie  
County Health District.
- (c) “Board of Health” shall mean the Board of Health of the Erie County  
Health District.
- (d) “Commissioner of Health” shall mean the Commissioner of Health of  
the Erie County Department of Health or his duly authorized  
representative.

- (e) “Sanitary Code” shall mean and comprise the rules and regulations now or hereafter formulated, promulgated and adopted by the Board of Health of the Erie County Health District pursuant to Section 347 of the Public Health Law of the State of New York and Section 504 of the Charter of Erie County.
- (f) “State Sanitary Code” shall mean the sanitary code established by the Public Health Council of the State of New York.
- (g) A “person” shall mean an individual, firm, corporation, association, municipality, public service district or public benefit corporation.

Section 3: Sanitary Code. Where in Force.

The provisions of the sanitary code shall be in force throughout the Erie County Health District.

Section 4: Enforcement by Local Boards of Health.

It shall be the duty of the Commissioner of Health and of each local health officer in the Erie County Health District, existing pursuant to law, to enforce any and every regulation of the sanitary code.

Section 5: Sanitary Code. Enforcement. Civil and Criminal.

Penalties. Hearings; Procedures.

- (a) Pursuant to the provisions of the Public Health Law and the Charter of Erie County, the Commissioner of Health may:

- (i) issue subpoenas which shall be regulated by the civil practice law and rules;
- (ii) compel the attendance of witnesses;
- (iii) administer oaths to witnesses and compel them to testify;
- (iv) issue warrants to any peace officer of the county or a municipality within the county to apprehend and remove any person or persons as cannot otherwise be subjected to his orders and regulations, and to the Sheriff of Erie County to bring to his aid the power of the County whenever it shall be necessary to do so; and
- (v) prescribe and impose penalties for the violation of or failure to comply with any of his orders or regulations, or any of the regulations of the state sanitary code or any order made pursuant to such codes or to law after holding a hearing thereon. Such penalties shall not exceed five hundred dollars for a single violation or failure, to be sued for and recovered by the said Commissioner in any court of competent jurisdiction. Each day on which such violation or failure continues shall constitute a separate offense. Nothing herein contained shall be construed to exempt an offender from any other persecution or penalty provided by law.



- (b) No subpoena shall be served outside the jurisdiction of the Erie County Health District, and no witness shall be interrogated or compelled to testify upon matters not related to the public health.
- (c) Every warrant issued by the Commissioner of Health shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly executed out of a court of record of the state.
- (d) Nothing contained in this section shall be construed to alter or repeal any existing provisions of law declaring such violations or any of them misdemeanors or felonies or prescribing a penalty therefore.
- (e) Pursuant to the provisions of Section 348 of the Public Health Law:
  - (i) the provisions of the sanitary code of the Erie County Health District shall have the force and effect of law; and
  - (ii) any non-compliance or non-conformance with any provision of such sanitary code or of a rule or regulation duly made thereunder shall constitute a violation punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than fifteen days or both such fine and imprisonment.

(f) Complaints: Hearing

In case of failure by conference conciliation and persuasion, to correct or remedy any violation of the Sanitary Code or of any rule or regulation adopted thereunder, the Commissioner of Health may cause to have issued and served upon the person complained against a written notice, together with a copy of the complaint made by him or a copy of the complaint made to him, which shall specify the provisions of the code, rule or regulation of which such person is said to be in violation, and a statement of the manner in which said person is said to violate it shall require the person so complained against to answer the charges of such complaint at a public hearing before the Commissioner at a time not less than 10 days after the date of notice.

(g) Complaints; Conduct of Hearing

(h) The respondent to such complaint may file a written answer thereto and may appear at such hearing in person or by representative, with or without counsel and may submit testimony, or may do both.

(ii) The Commissioner of Health at the request of any respondent to a complaint made pursuant to this article shall subpoena and compel the attendance of such witnesses as the respondent may reasonably designate and the said Commissioner shall require the production for examination of any book or paper relating to the matter under investigation at any such hearing.

(iii) The testimony at the hearing may be under oath and recorded stenographically.

(i) Order of Determination

After due consideration of the written and oral statements, the testimony and arguments that shall be submitted under the provisions of Subsection (g) above, or default in appearance of the respondent on the return day which shall be specified on the notice given in Subsection (f) above, the Commissioner of health may issue and enter such final order, or make such final determination as he shall deem appropriate under the circumstances, and he shall notify the respondent thereof in writing by certified mail.

(j) Review

Any final order or determination or other final action by the

Commissioner of Health and the validity or reasonableness of any code, rule or regulation of the Board of Health shall be subject to review as provided in Article Seventy-eight of the Civil Practice Law and Rules.

Section 6: Interference with Notices.

No person shall remove, mutilate or conceal any notice or placard of the Commissioner of Health posted in or on any premises or public place except by permission of the commissioner or any authorized representative thereof.

Section 7: Special Provisions

The regulations of this Code shall be supplemental to the regulation, rules and orders of the State Sanitary code, Public Health Law, Penal Law, and other New York State Laws relating to public health and shall, as to matters to which it refers, and in the territory prescribed therefore by law, supersede all local ordinances heretofore, or hereafter enacted inconsistent therewith.

Section 8: Inspection Generally.

- (a) All premises covered by the regulations of this Sanitary Code, whether located in the County Health District or elsewhere, shall be subject to inspection by the Commissioner of Health and if any violation of the

Sanitary Code exists on the premises, any permit granted by the Commissioner of Health may be suspended forthwith.

- (b) No person, firm or corporation shall refuse to allow the Commissioner of Health to fully inspect any and all premises and no person, firm or corporation shall molest or resist the Commissioner of Health in the discharge of his duties.

Section 9: Permits Generally.

- (a) All applications for permits or written approval herein required shall be made upon forms prescribed and furnished by the State Commissioner of Health, or the Commissioner of Health and shall be signed by the applicant who shall be the person, firm or corporation or authorized agent thereof, responsible for conformance to the conditions of the permit or approval applied for. Such application shall contain such data and information and be accompanied by such plans as may be required. A permit issued to a particular person, firm or corporation or for a designated place, purpose or vehicle shall not be valid for use by any other person, firm or corporation or for any other place, purpose or vehicles than that designated therein. Such permits or written approvals may contain general and specific conditions and every person, firm or corporation which shall have

obtained a permit or written approval as herein required shall conform to the conditions prescribed in said permit or written approval and to the provisions of the sanitary code. Every such permit shall expire as stated on the permit and may be renewed by the Commissioner of Health suspended for cause by the said Commissioner, or revoked by the said Commissioner after due notice and hearing.

- (b) No permit required by this code may be issued unless and until proof has been submitted by the applicant for such permit that the use for which such permit is issued will not violate any zoning or other land use regulation of any city, town or village, or of Erie County, or of any regional or other land use regulatory body having jurisdiction.
- (c) The restrictions imposed by subsection (b) of this section may be waived when the use for which a permit is to be issued is shown to be a part of a specific plan for environmental improvement, such plan having been duly adopted by the Erie County Legislature.

Passed and Effective 7/18/72.

- (d) ***Nothing herein shall prevent the Commissioner of Health, after reasonable collection efforts have been attempted, from revoking or suspending any permit that was previously issued by the Commissioner if the permit holder or operator owes any fines legally imposed by the Commissioner for violations of this Code, the New York State Public Health Law, the New York State Sanitary Code or any local law that the Erie County Health Department is required to enforce. The Commissioner of Health shall use due diligence to notify the permit holder of an impending revocation or suspension prior to executing an order for such action. Such notice shall be delivered to the operator, either by personal service or by certified mail, at least 14 days prior to executing an order for such suspension or revocation.***

***(e) Nothing herein shall prevent the Commissioner of Health, from revoking, or suspending, for a period of time not to exceed Thirty (30) days, any permit that was previously issued by the Commissioner, for three (3) or more violations in a twenty-four (24) month period of the provisions of the New York State Public Health Law, this Code or any local law that the Erie County Health Department is required to enforce or earlier legal Orders of the Commissioner.***

***Passed and effective December 8, 2006.***

Section 10: Issuance of Licenses.

Nothing herein contained shall be construed to restrict or abrogate the authority of any city or any village in the health district to adopt and enforce additional ordinances or to enforce existing ordinances relating to the regulation, control and/or issuance of any license and/or renewal and/or revocation thereof, and to charge and collect a fee therefore, provided however, that whenever inspection as to health and sanitation is required, no such city or such village shall issue or renew such license without first having obtained approval from the Commissioner of Health of the compliance with the rules and regulations now or hereafter formulated, promulgated and adopted by the Board of Health pursuant to the provisions of Section 347 of the Public Health Law.

ARTICLE IV  
GENERAL SANITATION

Section 1: Privies Generally. Definition.

- (a) “Privy” shall mean any facility or structure provided for the storage or deposit of human excreta without water carriage.
- (b) No person shall permit the existence on any property, place, or premises of any privy, the use of which is abandoned or no longer necessary for the occupancy of the property or which is improperly maintained so as to expose the contents thereof. Where a public sanitary sewer, a municipal or private water supply is available and accessible, the Commissioner of Health may issue an order, effective within not less than thirty (30) days, upon the owner of any property whereon a privy is located requiring said owner to abandon the use of and to remove said privy.
- (c) No privy shall be constructed under or within any building or structure intended or used for human occupancy.
- (d) All privies shall be properly enclosed and screened, ventilated, lighted, kept in repair and shall be maintained at all times in a clean and sanitary condition.



- (e) 1. No privy shall be within one hundred (100) feet of any place where food is prepared or served.
2. No privy shall be within fifty (50) feet of any lake, reservoir or stream.
3. No privy shall be located in the direct line of drainage, nor less than one hundred (100) feet in a horizontal direction from any water supply, intake pipe, well, or spring used as a source of water supply.
4. Privies, one hundred (100) feet to two hundred (200) feet from the source of a water supply shall be provided with water-tight vaults or receptacles, the contents of which shall be removed and disposed of in a sanitary manner.

Section 2: Exposure of Sewage.

- (a) No person either as owner, lessee, or tenant of any property, dwelling, building or place, shall construct or maintain and/or operate any privy, cesspool, sewage disposal system, pipe or drain so as to expose or discharge the sewage contents or other offensive material or matter therefrom to the atmosphere, or on the surface of the ground, nor so as to endanger any source of supply of drinking water, nor as to discharge

into a water source or body of water unless a permit for such discharge shall have been issued therefore by the appropriate state officer or his duly authorized designee and such discharge shall be made in accordance with the requirements thereof.

- (b) No facilities for the private disposal of sewage shall be constructed under or within any building or structure and no building or structure shall be erected on an area within which private sewage disposal facilities are in use unless special permission has been obtained therefore from the Department of Health.
- (c) No person shall permit the disposal of any substance into any plumbing line, sewer, privy, or separate sewage disposal system other than that which said facility is designed or is intended to receive.
- (d) Transferred to County Dept. of Environmental Quality Codes.

### Section 3: Sewer Connections Required.

(Transferred to County Dept. of Environmental Quality Codes)

### Section 4: Temporary Toilet Facilities on Construction.

Any person employing men on the construction of any highway, building or structure, shall provide or cause to be provided a temporary privy or privies or other satisfactory toilet facilities at a convenient place upon the premises, or readily accessible

thereto and the same shall be properly enclosed and the contents thereof shall be completely covered with clean inert material or otherwise effectively treated or removed immediately at the end of each shift or working day.

Section 5: Cleanliness of Public Toilets.

Any person who provides a toilet for the use of employees, patrons or members or available to the public, shall maintain such toilet at all times in a clean, well lighted, ventilated and sanitary condition. The floor of any such toilet under and adjacent to a urinal fixture shall be impervious to moisture and properly drained. No towel, hairbrush or comb, shall be provided for common use in any such toilet or in a washroom, rest room or locker room adjacent thereto. The term "common use" shall mean use by more than one person without effective disinfection. The owner of a building or dwelling, or his agent in charge thereof, wherein two or more tenants shall have common use of a toilet or privy, shall be responsible for the maintenance of such toilet or privy in repair and in a clean and sanitary condition. Facilities for washing and drying hands shall always be available, including soap dispensed in a sanitary manner.

Section 6: Required for Sewage Disposal System; Permit Fee.

- (a) NO person either as owner, the agent thereof, or lessee or tenant, shall undertake to construct or provide a system or facilities for the separate disposal of waterborne sewage, domestic or trade wastes to serve any building, dwelling, school, institution, or premises in or from which

such wastes may be discharged, unless such construction conforms to standards approved by the Commissioner of Health provided that such approval shall not be required when a permit therefore has been issued by the State Commissioner of Health.

- (b) No permit required by subsection (a) of this section shall be issued until and unless the applicant shall have paid to the Commissioner of Health a permit fee of Forty (\$40) Dollars.

To be effective thirty (30) days after passage on 7/18/72.

Section 7: Definitions. The Following definitions shall apply to Section 8, 9, and 10 of this Article.

- (a) The term “synthetic detergent” or “detergent” means any cleaning compound which is available for household use, laundry use, other personal uses or industrial use, which is composed of organic and inorganic compounds, including soaps, water softeners, surface active agents, dispersing agents, foaming agents, buffering agents, builders, fillers, dyes, enzymes, fabric softeners and/or other additives, whether in the form of crystals, powders, flakes, liquids, sprays or any other form.
- (b) The term “machine dishwasher” means equipment manufactured for the purpose of cleaning dishes, glassware and other utensils involved

in food preparation, consumption or use, using a combination of water agitation and high temperatures.

- (c) The terms “dairy equipment,” beverage equipment” and “food processing equipment” mean that equipment used in the production of milk and dairy products, foods and beverages, including the processing, preparation or packaging thereof for consumption.
- (c) The term “industrial cleaning equipment” means machinery and other tools used in cleaning processes during the course of industrial manufacturing, production and assembly.

#### Section 8:

- (a) No person shall sell, offer or expose for sale give or furnish for re-sale or use in Erie County any synthetic detergent or detergent containing more than eight and seven-tenths percent (8.7%) of phosphorous by weight, expressed as elemental phosphorous within the County of Erie Health District from and after May 11, 1971.
- (b) No person shall sell, offer or expose for sale, give or furnish for re-sale or use in Erie County any synthetic detergent or detergent containing any phosphorous, expressed as elemental phosphorous, within the County of Erie Health District after January 1, 1972.

Section 9:

The concentration by weight of phosphorous in any detergent shall be determined by the method prescribed from time to time by the American Society for Testing and Materials.

Section 10:

Notwithstanding the foregoing, synthetic detergents of detergents manufactured for use in machine dishwasher, dairy equipment, beverage equipment, food processing equipment and industrial cleaning equipment shall not be subject to the limitations prescribed in Sections 8 and 9.

Passed – Effective May 11 1971

Section 11: Water & Sewage Services for Multiunit complexes

(Transferred to County Dept. of Environmental Quality Codes)

Section 12: Transfer of Title to Property; Certification by Commissioner of Health:

Certification Fee.

- (a) No person shall transfer to any other person, nor accept from any other person, the transfer of the title to any structure or parcel of land on which a structure is located, provided such structure is to be used for human occupancy, unless and until the commissioner of Health

shall have examined the water supply and sewage disposal system serving such structure and issued a certificate that the water supply conforms to the standards of Article V of this code and applicable standards of the State Commissioner of Health, and that the sewage disposal system is in conformity with Section 2 of this Article. The operation of this section shall not be applicable to the following:

Transfers in a foreclosure action; transfers without consideration and other that in connection with a sale, including transfers conveying realty as bona fide gifts; transfers in connection with a partition; transfers pursuant to the federal bankruptcy act; transfers for which the consideration is \$100 or less.

- (b) No such certification of the water supply need be applied for or made if the water supply serving the structure is an approved public water supply as defined in Article V of this Code. No such certification of the sewage disposal system need be applied for or made if the sewage originating in the structure discharged only to a public sewer owned and operated by a public sewer or other special service district.
- (c) The Commissioner of Health may waive the requirement of certification as a prerequisite to transfer of title as herein before specified provided that the prospective purchaser shall have filed with the said Commissioner a written guarantee to correct any deficiencies

of the water supply or sewage disposal system within a period of time to be specified by the said Commissioner, and shall have posted a bond of One Thousand (\$1,000.00) Dollars which bond shall be forfeit if needed corrections of the water supply and sewage disposal systems are not completed within the time specified in the written guarantee.

- (d) No certification as specified in subsection (a) of this section, nor no waiver as specified in subsection (c) of this section shall be issued until and unless there shall have been paid to the Commissioner of Health a certification fee.\*
- (e) The Commissioner of Health may grant an exception from any requirement of this rule, on such terms as may be just, when in his discretion the enforcement of any such requirement will (i) cause undue financial or other hardship due to the imminent construction of public sewage facilities, or (ii) result in any other extreme hardship, provided that no such exception shall be granted if a serious health hazard exists or will occur as a result of the granting of any such exception.

Section 13: (Reserved)

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Section 14: Use of Septic Tanks in Subdivisions

1. Definition. When used in this section, the term realty subdivision shall have the meaning ascribed to it in Section 1115 of the New York State Public Health Law, and Section 17-1501 of the New York State Environmental Conservation Law.

2. The Commissioner of Health may approve realty subdivision submitted after the effective date of this section if:

- (a) the subdivision will be served by adequate public sanitary sewers prior to the occupancy of any residential unit within the subdivision; or
- (b) the subdivision will contain forty-nine or less lots, is within a sewer district, the commissioner finds that adequate public sanitary sewers will be available and accessible within five years of the date of the application, and all necessary state and federal approvals have been obtained for said public sanitary sewers; or
- (c) the subdivision is outside a sewer district, will contain forty-nine or less lots, the percolation rate for the soil in the subdivision is at least one inch in sixty minutes, and adequate public sanitary sewers are not available and accessible.

ARTICLE IV-A

SEWER USE REGULATIONS

(Transferred to County Dept. of Environmental Quality Codes)

ARTICLE IV-B  
REGULATION OF INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

Passed December 19, 1973

Section 1: Definitions

- (a) When used in this Article the term “individual sewerage system” means a system or piping, tanks or other facilities disposing of sewage or other liquid wastes into the soil.
- (b) When used in this Article the term “dwelling unit” shall mean dwelling unit as defined in Section 21.7, Title 10 of the New York State Codes, Rules and Regulations.

Section 2: No person, firm or corporation shall construct or place an individual sewerage system on any premises or part thereof except as permitted by the Commission of Health.

The commissioner of Health shall regulate and control the construction of individual sewerage systems in permissible locations in Erie County. The Commissioner shall establish and publish construction specifications and performance standards for individual sewerage systems. Such specifications and standards shall not be less restrictive than the minimum specifications and standards set out in the Manual of Septic

Tank Practice of the United States Department of Health, Education and Welfare, and applicable rules and regulations of the New York State Department of Health, and New York State Department of Environmental Conservation. The Commissioner may establish separate classes of construction specifications and performance standards for individual sewerage systems for different types of realty developments and land uses. These may include, but need not be limited to, separate classifications for single family dwellings, multiple dwellings, commercial or industrial uses, realty subdivisions, and for systems within cities or villages.

Section 3: No person, firm, or corporation shall construct or place on any premises any individual sewerage system, or part of such system in any of the following locations:

- (a) within the limits of any sewer district in Erie County where public sanitary sewer collection lines and municipal or private water supply are available and accessible;
- (b) within 200 feet of any reservoir or ground water aquifer for a public water supply, or within 100 feet of any other body of water, or within such greater distance of a reservoir or body of water as the Commissioner determines is required to protect the quality of the reservoir or body of water in accordance with water quality standards set by the New York State Departments of Health or Environmental Conservation.

Section 4: The Commissioner of Health may permit the construction of individual sewerage systems in permissible locations in Erie County subject to the following limitations:

(a) Within cities or villages.

Systems to serve buildings or structures within the corporation limits of a city or village may be permitted by the Commissioner if:

- 1) the governing body of the affected city or village, or the mayor's delegate, approves construction of the proposed individual sewerage system; and
- 2) the site and soil conditions are adequate to permit the proposed systems to satisfy performance standards established by the Commissioner for individual sewerage systems within cities or villages.

(b) Outside cities or villages, but within a sewer district.

Systems to serve building or structures which are located outside a city or village, but which are within a sewer district, may be permitted by the Commissioner if:

- 1) the commissioner finds that public sanitary sewers will be available and accessible to the buildings or structures within ten (10) years of the date of the application and all necessary state and federal approvals have been obtained for such sewers; and

2) the site is adequate to meet the construction specifications and satisfy the performance standards established by the Commissioner for systems to serve the type of development proposed for the site.

(c) Outside cities or village and not within a sewer district, or in a location not to be served by public sanitary sewers.

Systems to serve buildings or structures which are not within a sewer district, or which are in a location which the Commissioner finds will not be served by public sanitary sewers within ten (10) years of the date of application, may be permitted by the Commissioner if:

1) the site is adequate to meet the construction specifications and performance standards established by the Commissioner for systems to serve the type of development proposed for the site; and

2) in cases where a conventional septic tank system is permitted, the site will provide adequate unimproved space to allow construction of a complete replacement system in the event the first system fails; and

3) in cases where a septic tank and tile field in fill is permitted, the site provides a minimum of [20,000 square feet] ¾ acre for each dwelling unit.

Section 5: No permit issued under this Article shall be deemed to authorize any action prohibited by or under the New York Public Health Law or New York Environmental Conservation Law.

Section 6: Enforcement.

(a) Inspection – Any individual sewerage system located in the County of Erie shall be subject to inspection by the Commissioner of Health.

(b) If the Commissioner of Health determines that an individual sewerage system is not in conformity with Section 2, Article IV, the person, firm, or corporation that owns, maintains, or operates the individual sewerage system shall immediately correct such system.

(c) If the commissioner of Health determines that continued use and operation of any individual sewerage system results in or contributes to a public health hazard or nuisance, he may order the immediate cessation of any use of the individual sewerage system.

(d) The construction, maintenance or operation of an individual sewerage system in violation of the provisions of the Erie County Sanitary Code shall be subject to penalties, both civil and criminal, in accordance with provisions of the Erie County Sanitary code. Any construction, maintenance or use in a twenty-four (24) hour period shall constitute a separate, independent violation.

(e) Nothing contained in this Section shall be construed to alter or repeal any existing provisions of law or provisions of the Erie County Sanitary code in regard to the provision of penalties to or enforcement of a violation of the Erie county Sanitary Code Article IV-A.

Section 7. This Article shall become effective immediately upon adoption by the Board of Health of Erie County.



## GENERAL PROVISIONS

### Section 1.1: Introduction.

There exist and may in the future exist, within the County of Erie, premises, dwellings, dwelling units, rooming units, or parts thereof, which by reason of their structure, equipment sanitation, maintenance, use, or occupancy affect or are likely to affect adversely the public health (including the physical mental and social well-being of persons and families), safety, and general welfare. To correct and prevent the existence of such adverse conditions, and to achieve and maintain such levels of residential environmental quality as will protect and promote public health, safety, and general welfare, the establishment and enforcement of minimum housing standards are required.

### Section 1.2: Purposes.

It is hereby declared that the purpose of this Part is to protect, preserve, and promote the physical and mental health and social well-being of the people, to minimize the incidence of communicable diseases, to regulate privately and publicly owned dwellings for the purpose of maintaining adequate sanitation and public health, and to protect the safety of the of the people and to promote the general welfare by regulations which shall be applicable to all dwellings now in existence or hereafter constructed. It is hereby further declared that the purpose of this Part is to insure that the quality of housing is adequate for protection of public health, safety and general welfare. The achievement

of this purpose includes the establishment of minimum standards for basic equipment and facilities for healthful living, such as adequate water, waste disposal, bathroom facilities, light, ventilation, heating and cooling, for safety from fire and accidents, and for an adequate level of maintenance; setting forth the responsibilities of owners, operators and occupants of dwellings; and establishing the necessary provisions for administration and enforcement.

Section 1.3: Title.

This article shall be known and may be cited as the Erie County Sanitary Code Article IX.

Section 1.4 Application and scope.

(a) Application. The requirements of this Article shall:

(1) When adopted by the appropriate local authority, apply within Erie County.

(2) Apply to all dwellings, dwelling units, habitable rooms and rooming houses within the jurisdiction of Erie County, except those regulated under Parts 7 and 15 of the State Sanitary Code.

(b) Erie County Commissioner of Health may direct enforcement. Notwithstanding the limits of application and administration set forth in the preceding subdivision, the Erie County Commissioner of Health may enforce the requirements of this Article in any area where a danger or

hazard to the public health shall or is likely to exist because of housing conditions.

- (c) Construction. It is intended that the application of the provisions of this Article be consistent with provisions of applicable State and local laws, codes, rules and regulation; provided, however, that where the provisions of this Article are more restrictive, they shall govern, and where the provisions of such applicable State or local laws, codes, rules and regulations are more restrictive, they shall govern.
- (d) Variance. The Erie County Commissioner of Health may, on written application and after review, grant a variance from a specific provision of this Article in a specific case subject to appropriate conditions where such variance is in harmony with the general purpose and intent of this Article, and where there are practical difficulties or unnecessary hardship in carrying out the strict letter of its provision.
- (e) Separability. If any provisions of this Article are held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provisions.

Section 1.5: Dwelling unfit for human habitation.

Whenever the Erie County Board of Health or Erie County Commissioner of Health finds that any dwelling constitutes a serious hazard to the health or safety of the occupant or to the public because it is dilapidated, unsanitary, vermin-infested or lacking in the facilities required by this Article, he may designate such dwelling unfit for human habitation, order the dwelling vacated, and may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "Use of this building for human habitation is prohibited and unlawful." If the owner fails to comply with an order issued by the Erie County Board of Health or Erie County Commissioner of Health, such board of health or Commissioner of Health may order such dwelling to be removed or demolished as provided for by applicable County law and laws and regulations of the town, village, or city having jurisdiction. The provisions of this section are applicable also to unoccupied dwelling units and the owners thereof shall be chargeable with compliance.

Section 1.6: Inspection and enforcement

(a) Inspection

(1) The Erie County Commissioner of Health and any person authorized by him to do so, may without fee or hindrance, make inspections to determine the

condition of dwellings, dwelling units, rooming houses, rooming units and the premises on which they are located, in order to fulfill the purposes of this Part.

2) For the purpose of making such inspections, the inspector is hereby authorized to enter, examine and survey all dwellings, dwelling units, rooming houses and rooming units and the premises on which they are located. Except for emergencies, or where authorized by other law or for the convenience of the occupant or owner, such inspections shall be made between the hours of 8 a.m. and 5 p.m.

(3) The owner, the operator and the occupant shall give the inspector free access to the dwelling, dwelling unit, rooming house or rooming unit, and the premises on which they are located, for the purpose of such an inspection.

(4) Evidence of a violation of this Part discovered during such inspection shall not be used against the violator in either a criminal or civil proceeding except under the following conditions:

(i) written notice of said violation shall be left with or mailed to the person responsible for correction of such violation or in the alternative such notice shall be posted in a conspicuous place upon the dwelling, dwelling unit, rooming house or rooming unit or the premises where the violation is discovered.

(ii) said written notice states a specific and reasonable time within which such violation shall be eliminated; and

(iii) at the end of such time the violation has not been eliminated.

Section 1.7: Definitions.

- (a) Accessory structure shall mean a detached structure or an attached structure located on or partially on any premises, which is not used or not intended to be used for living or sleeping by human occupants.
- (b) Approved shall mean approved by the Erie County Commissioner of Health.
- (c) Central heating system shall mean a single system supplying heat to one or more dwelling unit(s) or more than one rooming unit(s).
- (d) Conditions conducive to lead poisoning shall mean the presence of a paint or other similar surface-coating material in a condition accessible for ingestion or where peeling or chipping of the paint or other similar surface-coating material occurs or is likely to occur and which paint or other similar surface-coating material contains more than one-half of one percent of metallic lead based on the total weight of the contained solids or dried paint film on interior walls, ceilings, doors, baseboards or window sills and frames or porches of any dwelling.
- (e) Dwelling shall mean any building or structure which is wholly or partly used or intended to be used for living or sleeping by human occupants.

- (f) Dwelling unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.
- (g) Egress shall mean a place or means of going safely to the outside of a dwelling or building.
- (h) Extermination shall mean the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping, or by other recognized and legal pest elimination methods approved by the local or State authority having such administrative authority.
- (i) Family shall mean one adult person plus one or more persons who are legally related to said person and residing in the same dwelling unit with said person.
- (j) Erie County Commissioner of Health shall mean the health commissioner of Erie County.
- (k) Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, serving, and non-consumption of food.
- (l) Guest shall mean any person who shares a dwelling unit in a nonpermanent status for not more than 30 days

- (m) Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding bathrooms, water closet compartments, laundries, furnace rooms, pantries, kitchenettes and utility rooms of less than 50 square feet, foyers or communicating corridors, stairways, closets and storage spaces; workshops, hobby and recreation areas in unsealed or un-insulated parts of structure below ground level or in attics.
- (n) Heated water shall mean water supplied to a fixture at a temperature of 90 to 110 degrees Fahrenheit.
- (o) Household shall mean a family and/or one or more unrelated persons, who share the same dwelling and use some or all of its cooking and eating facilities. It shall include servants and not more than two boarders.
- (p) Infestation shall mean the presence within or around a dwelling of any insets, rodents or other pests.
- (q) Kitchen shall mean any room used primarily for cooking or preparation of food and containing any or all of the following equipment: sink and/or other device for dishwashing, stove or other device for cooking, refrigerator or other device for cool storage of food. Where a room is used for cooking and preparation of food, but not primarily so used, kitchen shall mean that portion of such room



which contains the above equipment and an area within three feet of such equipment.

- (r) Meaning of certain words. Whenever the words “Dwelling,” “dwelling unit,” “rooming house,” “rooming unit,” “premises,” “structure” are used in this Part, they shall be construed as though they were followed by the words “or any part thereof.” Words used in the singular include the plural, and the plural the singular, the masculine gender includes the feminine and the feminine the masculine.
- (s) Multiple dwelling shall mean any dwelling containing more than two dwelling units or more than four roomers.
- (t) Occupant shall mean any person, over one year of age, living, sleeping, cooking, or eating in, or actually having possession of, a dwelling unit or a rooming unit; except that in dwelling units a guest will not be considered an occupant.
- (u) Operator shall mean any person who has charge, care or control of a building, or part thereof, in which there are dwelling units or rooming units.
- (v) Owner shall mean any person who, alone or jointly or severally with other:
- (1) shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof, or

(2) shall have charge, care, or control of any dwelling or dwelling unit, as owner, lessee, mortgagee or vendee in possession, assignee of rents, or as a receiver; or an executor, administrator, trustee, or guardian of the estate of the owner. Any agent for any of the above shall be bound to comply with the provisions of this Part to the same extent as if he were the owner.

(w) Person shall mean and include any individual, firm, public or private corporation, municipality, political subdivision, association, trust, estate, agency, board, department or bureau of a municipality, partnership, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(x) Plumbing shall mean and include all of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

- (y) Privacy shall mean the ability of a person or persons to carry out an activity without interruption or interference, either by sight or sound, by persons outside of the household.
- (z) Premises shall mean a platted lot or part thereof or unplatted lot or parcel or land or plot of land, whether or not it has erected thereon a dwelling or non-dwelling structure and it includes any building, accessory structure or other structure thereon.
  - (aa) Rodent harborage shall mean any place where rodents can live, nest or seek shelter.
  - (bb) Rat proofing shall mean a form of construction which will prevent the ingress or egress of rats to or from a given space or building, or gaining access to food, water, or harborage. It consists of the closing and keeping closed of every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk openings and other places that may be reached and entered by rat climbing, burrowing or other methods, by the use of materials impervious to rat gnawing or by other methods approved by the Erie County Commissioner of Health.
  - (cc) Refuse shall mean all putrescible and nonputrescible solids (except body wastes) including garbage, rubbish, ashes, and dead animals.

(dd) Refuse container shall mean a watertight container that is constructed of metal, or other durable material impervious to rodents, that is capable of being serviced without creating unsanitary conditions, or such other containers approved by the Erie County Commissioner of Health. Openings into the container such as covers and doors shall be tight fitting.

(ee) Rooming unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping but not for cooking or eating purposes.

(ff) Rooming house shall mean any dwelling or that part of any dwelling containing one or more rooming units, in which space is occupied by three or more roomers who are not members of a single family.

(gg) Rubbish shall mean nonputrescible solid wastes (excluding ashes) consisting of either or both:

- 1) combustible wastes such as paper, cardboard, rags, furniture, plastic containers, yard clippings, tree branches, leaves and wood, and
- 2) noncombustible wastes such as tin cans, glass, crockery and discarded appliances.

(hh) Safety shall mean the condition of being reasonably free from danger and hazards which may cause accidents or disease.

(ii) Supplied shall mean paid for, furnished, provided by, or under the control of the owner or operator.

## RESPONSIBILITIES OF OWNERS AND OCCUPANTS

### Section 1.8: Occupancy and letting.

No owner or other person shall occupy or let to another person any vacant dwelling or dwelling unit unless it and the premises are clean, sanitary, fit for human occupancy, and comply with the requirements of this Article and all applicable laws.

### Section 1.9: Owner to maintain in clean and sanitary condition.

Every owner of a dwelling containing two or more dwelling units shall maintain in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof. Owner shall secure vacant building against intrusion by vandals.

### Section 1.10: Occupant to maintain in a clean and sanitary condition.

Every occupant of a dwelling or dwelling unit shall maintain in a clean and sanitary condition those parts of the dwelling, dwelling unit and premises thereof that he occupies and controls.

Section 1.11: Occupant to dispose of rubbish.

Every occupant of a dwelling or dwelling unit shall store and dispose of all his rubbish in a clean, sanitary and safe manner.

Section 1.12: Occupant to dispose of garbage.

Every occupant of a dwelling or dwelling unit shall dispose of and store all his garbage or any other organic waste which might provide food for insects or rodents, in a clean, sanitary and safe manner. Rodent-proof, watertight refuse containers shall be used for storage pending collection.

Section 1.13: Containers to be provided for rubbish and garbage.

Every owner of a dwelling containing three or more dwelling units shall supply adequate facilities or refuse containers for the sanitary and safe storage and/or disposal of rubbish and garbage. In single or two family dwellings it shall be the responsibility of the occupant to furnish such facilities or refuse containers.

Section 1.14: Responsibility for extermination.

Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the

premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

#### Section 1.15 Rodent control

- (a) Every occupant of a dwelling or dwelling unit shall store and dispose of accumulated rubbish, boxes, lumber, scrap metal, or any other materials in such a manner as to prevent rodent harborage in or about any dwelling or dwelling unit. Materials shall be stacked neatly in piles elevated to a level high enough to permit effective cleaning.
- (b) Every owner of a dwelling containing two or more dwelling units shall supply facilities or make provisions for the storage and disposal of accumulated rubbish, boxes, lumber, scrap metal or any other materials in such a manner as to prevent rodent harborage in or about the shared or public areas of a dwelling or its premises. Materials shall

be stacked neatly in piles elevated at a level high enough to permit effective cleaning.

- (c) Every owner or occupant of a dwelling or dwelling unit shall not store, place, or allow to accumulate any materials that may serve as food or harborage for rodents in a site accessible to rodents.
- (d) No person shall feed in the open any domestic or wild fowl, birds or animals other than in a suitable container and in such a manner so as to prevent scattering of food upon the ground or ground level which can or will provide food for rodents, insects, vermin or other pests.

Section 1.16: Occupants responsibility as to supplied fixtures and facilities.

- (a) Every occupant of a dwelling unit shall keep all supplied fixtures and facilities therein in a clean, sanitary and operable condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.

MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES

Section 1.17: Basic equipment and facilities required for dwelling or dwelling unit occupied or let for living, sleeping cooking or eating.



No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purposes of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

(a) Kitchen requirements.

Every dwelling unit shall have a room or portion of a room in which food may be prepared and/or cooked and which room shall have adequate floor area available for occupant use and be equipped with the following:

(1) a kitchen sink in good working condition and properly connected to a water supply system which is approved by the Erie County Commissioner of Health and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewer system approved by the Erie County Commissioner of Health.

(b) Water closet requirements.

Within every dwelling unit there shall be a non-habitable room which affords privacy to a person within said room and which is equipped with a flush water closet in good working condition. Said flush water closet shall be connected to a water system that at all times provides an adequate amount of running water under pressure to cause the water closet to be operated properly and shall be

connected to a sewer system which is approved by the Erie County Commissioner of Health.

(c) Lavatory sink requirements.

Within every dwelling unit there shall be a room which affords privacy to a person within said room which is equipped with a lavatory sink. Said lavatory sink may be in the same room as the flush water closet or in another room; provided that, if located in a room other than the one containing the flush water closet, the water closet shall be located in close proximity to the door leading directly into the room in which said lavatory sink is located. The lavatory sink shall be in good working condition and properly connected to a water supply system which is approved by the Erie County Commissioner of Health and which provides at all times an adequate amount of heated and unheated, running water under pressure, and which is connected to a sewer system approved by the Erie County Commissioner of Health.

(d) Bathtub or shower requirements.

Within every dwelling unit there shall be a room which affords privacy to a person within said room and which is equipped with a bathtub or shower in good working condition. Said bathtub or shower may be in the same room as the flush water closet or in another room and shall be properly connected to a water supply system which is approved by the Erie County Commissioner of Health and which

provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewer system approved by the Erie County Commissioner of Health.

#### MINIMUM STANDARDS FOR LIGHT AND VENTILATION

Section 1.18: Light and ventilation required for dwelling or dwelling unit occupied or let for living purposes.

No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements.

(a) Windows. Every habitable room must have adequate windows for light and ventilation.

(b) Electric services.

All electric outlets and fixtures shall be properly installed, shall be maintained in safe working condition, and shall be connected to the source of electric power in a manner prescribed by law.

1) Every habitable room shall have a minimum of one duplex outlet.

2) Every water closet compartment, bathroom, laundry room, furnace room, and public hall shall contain at least one ceiling or wall type electric light fixture.

(c) Lighting for public halls and stairways.

Every public hall and stairway in a multiple dwelling shall be adequately lighted by natural or electric light at all times. Every public hall and stairway in structures containing no more than two dwelling units shall be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.

## MINIMUM THERMAL STANDARDS (HEATING AND COOLING)

Section 1.19: Thermal requirements for occupying or letting, for living purposes.

No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

(a) Heating facilities.

Every dwelling shall have heating facilities which are properly installed, and are maintained in safe and good working condition, and

are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit as noted in (b) below.

(b) Minimum temperature.

The owner is responsible for furnishing the heat unless the rental agreement provides otherwise. Between September 1<sup>st</sup> and June 1<sup>st</sup>, where the owner furnishes the heat, the temperature shall be maintained at not less than 68 degrees Fahrenheit at a distance of 18 inches above floor level and three feet from an outside wall.

(d) Space and water heaters.

Unvented flame space heaters and space heaters without back-draft diverters and automatic controls are prohibited; portable electric heaters, approved under the appropriate local or State electrical and/or fire prevention code are acceptable (where they meet the provisions of subdivision {a} of this section). Where there is no such local or State code, portable electric heaters meeting the standards of the National Electrical code, as approved by the Underwriter Laboratories, Inc. and the Erie County Commissioner of Health are acceptable. Gas-fueled space or water heaters and accessories or controls shall be properly installed and be of a type approved by the American Gas Association and the Erie County Commissioner of Health.

GENERAL REQUIREMENTS RELATING TO THE SAFE AND SANITARY  
MAINTENANCE OF PARTS OF DWELLINGS AND DWELLING UNITS

Section 1.20: Maintenance and installation requirements for dwelling and dwelling unit occupied or let for living purposes.

No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements.

(a) General.

Every foundation, roof and exterior wall, door, skylight and window shall be reasonably weather-tight, watertight, and damp-free and shall be kept in sound condition and good repair. Floors, interior walls, doors and ceilings shall be sound and in good repair. All exterior wood surfaces other than decay resistant woods, shall be protected from the elements and decay by paint or other protective covering or treatment. Lead based and other toxic paints and materials shall not be used on any interior surface or any surface readily accessible to children. Walls shall be capable of affording privacy for the occupants. Every premises shall be well-graded, drained and maintained in a clean, sanitary and safe condition.

(b) Windows, doors and hatchways.

Every window, exterior door and basement hatchway or similar devices, shall be kept rodent-proof and reasonably watertight and weather-tight, and shall be kept in sound working condition and good repair. All exterior doors shall have operable locking devices.

(c) Screening.

During that portion of the year when there is a need for protection against mosquitoes, flies and other flying insects, every door opening directly from a dwelling unit to outside space shall have supplied properly fitting screens. A minimum of one window in every habitable room shall be properly screened to allow ventilation.

(d) Prevent entrance of rodents.

Every window located at or near ground level used or intended to be used for ventilation, and every other opening located at or near ground level which might provide an entry for rodents shall be supplied with adequate gauge screen or such other devices as will effectively prevent their entrance.

(e) Safety.

Stairways shall have handrails structurally sound, of reasonable height, and where needed, balusters adequately spaced.

(e) Plumbing fixtures and water and waste pipes.

Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition.

(f) Floors for water closet compartment, bathrooms and kitchens.

Every water closet compartment, bathroom and kitchen floor surface and baseboard shall be constructed and maintained so as to be reasonably impervious to water so as to permit such floor to be easily kept in a clean and sanitary condition.

(h) Construction, installation and maintenance.

Every plumbing fixture pipe, chimney, flue and smoke pipe, and every other facility, piece of equipment, or utility which is present in a dwelling or dwelling unit, or which is required under this Part, shall be constructed and installed in conformance with the applicable local, State, or national codes and shall be maintained in satisfactory working condition.

(h) Lead poisoning.

Existing paint conditions conducive to lead poisoning shall be eliminated in accordance with procedures contained in article 18, title X of the Public Health Law.



Section 1.21: Discontinuance of services, facilities, equipment or utilities.

No owner, operator, or occupant shall cause or be responsible for causing any service, facility, equipment or utility which is required under this Part to be removed from or shut off from or discontinued for any occupied dwelling or dwelling unit let or occupied by him; except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is either not reasonably avoidable or is approved by the Erie County Commissioner of Health.

#### MAXIMUM DENSITY, MINIMUM SPACE, USE AND LOCATION REQUIREMENTS

Section 1.22: Specification of requirements.

No person shall occupy or let to be occupied any dwelling or dwelling unit, for the purpose of living therein, unless there is compliance with the applicable State and Local Codes.

(a) Habitable room below grade.

No space located partially or totally below grade shall be used as a habitable room of a dwelling unit unless:

(1) The floor and those portions of the walls below grade are of water-proof and damp-proof construction.

(2) The minimum window area is equal to at least that required in section 21.19(a) and is located entirely above the grade of the ground adjoining such window area, or if windows are located wholly or partly below grade, there be constructed a properly drained window well the ground area of which is equal to or greater than the area of the masonry opening for the window, the bottom of which is below the top of the impervious masonry construction under this window, with the minimum horizontal distance at a right angle from any point of the window wall being equal to or greater than the vertical depth of the window well, as measured from the bottom of the masonry opening for the window.

(b) Access to bathroom, water closet compartments and sleeping rooms.

No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangements that access to a bathroom or water closet compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; not shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or water closet compartment.

## ROOMING HOUSE

### Section 1.23: General.

No person shall operate a rooming house, or shall occupy or let to another for occupancy any rooming unit in any rooming house, except in compliance with the provisions of this Article. No owner or other person shall occupy or let to another person any vacant rooming unit unless it is clean, sanitary, and fit for human occupancy, and complies with all applicable legal requirements.

### Section 1.24 Permit.

#### (a) Permit required.

No person shall operate a rooming house unless he holds a valid rooming house permit issued by the Erie County Commissioner of Health in the name of the operator and for the specific dwelling or dwelling unit. The applicant must be a fit and proper person to operate a rooming house and the rooming house which he intends to operate must be in compliance with the provisions of this Article. This permit shall be displayed in a conspicuous place within the rooming house at

all times. No such permit shall be transferable. Every person holding such a permit shall give notice in writing to the full-time health officer within 24 hours after having sold, transferred, given away, or otherwise dispose of ownership of, interest in, or control of any rooming house. Such notice shall include the name and address of the person succeeding to the ownership or control of such rooming house. Every rooming house permit shall expire at the end of one year following its date of issuance, unless sooner suspended or revoked as hereinafter provided.

(b) Modification, suspension or revocation of a permit.

A permit to operate a rooming house may be modified, suspended or revoked by the Erie County Commissioner of Health or his designee. Such action may be taken because of:

- (1) failure to comply with one or more of the provisions of this Article;
- (2) refusal to permit inspection, or make arrangements for annual inspection;
- (3) mistake in issuance of the permit;
- (4) false statements on the application for the permit;

- (5) the permittee's conviction of a crime;
- (6) any act or conduct of the permittee which indicates his  
unfitness to operate a rooming house; or
- (7) for other good reason.

(c) Hearing.

Before a permit may be modified, suspended or revoked, the permittee shall have the opportunity to be heard, except that a permit may be temporarily suspended pending a hearing.

Section 1.25: Requirements for water closet, lavatory and bathtub or shower.

At least one flush water closet, lavatory basin and bathtub or shower, properly connected to a water and sewer system approved by the Erie County Commissioner of Health and in good working condition, shall be supplied for each six persons or fraction thereof residing within a rooming house, including members of the operator's family wherever they share the use of the said facilities, except that in a rooming house where rooms are let only to males, flush urinals may be substituted for not more than one half of the required number of water closets greater than one.

(a) Accessibility.

All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all

persons sharing such facilities.

(b) Hot and cold water.

Every lavatory basin and bathtub or shower shall be supplied with heated and unheated water at all times.

(c) Facilities in basements.

No such facilities shall be located in a basement, except by written approval of the Erie County Commissioner of Health.

Section 1.26: Cooking and dining.

(a) No cooking.

Cooking in a rooming unit shall be prohibited.

(b) No communal cooking and dining.

Communal cooking and dining facilities in a rooming house shall be prohibited, except as approved by the Erie County Commissioner of Health in writing.

Section 1.27: Locks for doors.

Rooming unit doors shall have operating locks to insure privacy.

Section 1.28: Bed linen and towels.

The operator of every rooming house shall change supplied bed linen and towels therein at least once each week, and prior to the letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

Section 1.29: Floor space for sleeping rooms.

Every room occupied for sleeping purposes by one person shall contain at least 80 square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least 60 square feet of floor space for each occupant thereof.

Section 1.30 Egress.

Every rooming unit shall have two or more safe, unobstructed means of egress leading to safe and open space at ground level, as required by law. A sprinkler system satisfactory to the Erie County Commissioner of Health may be substituted in lieu of one means of egress.

## GENERAL PROVISIONS TABLE OF CONTENTS

- 1.1 Introduction
- 1.2 Purposes
- 1.3 Title
- 1.4 Application and scope
- 1.5 Dwelling unfit for human habitation
- 1.6 Inspection and enforcement
- 1.7 Definitions

## RESPONSIBILITIES OF OWNERS AND OCCUPANTS

- 1.8 Occupancy and letting
- 1.9 Owner to maintain in clean and sanitary condition
- 1.10 Occupant to maintain in clean and sanitary condition
- 1.11 Occupant to dispose of rubbish
- 1.12 Occupant to dispose of garbage
- 1.13 Containers to be provided for rubbish and garbage
- 1.14 Responsibility for extermination
- 1.15 Rodent control
- 1.16 Occupant's responsibility as to supplied fixtures and facilities
- 1.17

## MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES

- 1.18 Basic equipment and facilities required for dwelling or dwelling unit occupied or let for living, sleeping, cooking or eating.

## MINIMUM STANDARD FOR LIGHT AND VENTILATION

- 1.19 Light and ventilation required for dwelling or dwelling unit occupied or let for living purposes

## MINIMUM THERMAL STANDARDS (HEATING AND COOLING)

- 1.20 Thermal requirements for occupying or letting, for living purposes



GENERAL REQUIREMENTS RELATING TO THE SAFE AND SANITARY  
MAINTENANCE OF PARTS OF DWELLING AND DWELLING UNITS

- 1.21 Maintenance and installation requirements for dwelling or dwelling unit occupied or let for living purposes.
- 1.22 Discontinuance of services, facilities, equipment or utilities.

MAXIMUM DENSITY, MINIMUM SPACE, USE AND LOCATION  
REQUIREMENTS

- 1.23 Specifications of requirements

ROOMING HOUSE

- 1.24 General
- 1.25 Permit
- 1.26 Requirements for water closet, lavatory, and bathtub or shower
- 1.27 Cooking and dining
- 1.28 Locks for doors
- 1.29 Bed linen and towels
- 1.30 Floor space for sleeping rooms
- 1.31 Egress

ARTICLE X  
MEDICAL SERVICES

Section 1:     Abortions

- (a) Abortions on patients with a gestation up to and including twelve weeks as determined by a qualified physician may be performed on an ambulatory basis if the patient's medical condition permits.
- (b) The following patients shall be treated on an inpatient basis for the abortion:

- 1) Patients pregnant more than twelve weeks as determined by a qualified physician.

- 2) Patients having such medical, surgical, gynecological or psychiatric conditions or complications as specified in the rules of the chief of staff of the abortion service and filed with the New York State Department of Health and the Erie County Regional Office thereof.

## ARTICLE XV

### VALIDITY

#### Section 1: Unconstitutionality Clause

In the event any section, paragraph, sentence, clause, or phrase of this Sanitary Code shall be declared unconstitutional or invalid for any reason, the remainder of said code shall not be affected thereby.

ARTICLE XVI  
EFFECTIVE DATE

Section 1:     When to Take Effect

Every regulation of the Sanitary Code, unless otherwise specifically stated, shall take effect on the 15<sup>th</sup> day of June, 1948.

## ARTICLE XVII

### COIN-OPERATED DRY CLEANING MACHINE INSTALLATIONS

(Adopted on December 4, 1962, Effective January 1, 1963)

#### Section 1: Prior Approvals.

##### (a) Plan Filling

No persons, firms, partnership or corporation shall install or operate a coin-operated dry cleaning machine or machines, or make changes in any existing installations if such changes may affect health until plans and specifications in triplicate there-for shall first have been submitted to and received the approval of the Commissioner of Health.

##### (b) Instructions for Preparing Installation Plans.

Plans shall show:

1. An outline of that portion of the building in which the coin-operated dry cleaning machines are to be installed.
2. Location of the dry cleaning machines.
3. Manufacturer and model number.
4. Layout in plan and elevation views of exhaust duct work. This should be drawn to scale and should show the ducts by double lines, supports, and the point of discharge out-of-doors.

5. Location and specifications of all general ventilating equipment including window or roof exhaust fans, supply fans, and local exhaust fans. Fan specifications must include manufacturer, type, design, size, capacity, static pressure, speed and motor horsepower. Means by which make-up air enter the building must also be shown.

## ARTICLE XXII-REGULATIONS OF TATOO ARTISTS AND ESTABLISHMENTS

The following Article includes the amendments of 2005

### Purpose:

The act of tattooing is an invasive procedure which punctures the skin and injects a dye into the tissue just below the skin. The skin is the body's primary barrier to infectious agents and any procedure which compromises the integrity of this barrier increases the possibility of infection. In this age, with some diseases causing serious health problems, it is imperative to regulate both the person applying the tattoo and the facility and equipment used in this procedure. The art of tattooing has been in practice since early human history and it appears that if properly applied, this practice has minimal medical significance. Therefore, the purpose of this Article is to assure that the conditions in the tattoo facility provide a safe and sanitary environment and that the person applying the tattoo has a basic knowledge of aseptic techniques.

### Section 1: Definitions

For the purpose of this Article, the following words and phrases when used herein shall be construed as follows:

- (a) Tattoo – The word “tattoo” shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.
- (b) Tattoo Establishment – The words “tattoo establishment” shall mean any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.
- (c) Tattoo Operator – The words “tattoo operator” shall mean any person who controls, operates, conducts, or manages any tattoo establishment, whether actually performing the work of tattooing or not.
- (d) Tattoo Artist – The words “tattoo artist” shall mean any person who actually performs the work of tattooing.
- (e) Permanent Makeup – The words “permanent makeup” shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks.

For the purpose of this Article, whenever the word tattoo is used, it shall also apply to permanent makeup.

- (f) Permanent Makeup Establishment – The words “permanent makeup establishment” shall mean any room or space where permanent makeup is applied or any part thereof. For the purpose of this Article, whenever the words tattoo establishment are used, it shall also apply to permanent makeup establishment.
- (g) Permanent Makeup Operator – The words “permanent makeup operator” shall mean any person who controls, operates, conducts, or manages any establishment where permanent makeup is applied, whether actually applying the permanent makeup or not. For the purpose of this Article, whenever the words tattoo operator are used, it shall also apply to permanent makeup operator.
- (h) Permanent Makeup Cosmetologist – The words “permanent makeup cosmetologist” shall mean any person who actually performs the work of applying permanent makeup. For the purpose of this Article, whenever the words tattoo artist are used, it shall also apply to permanent makeup cosmetologist.
- (i) Health Officer – The words “health officer” shall mean the Commissioner of the Erie County Health Department or a duly authorized representative.
- (j) Minor – The work “minor” shall mean any male under the age of eighteen (18) year and any female under the age of eighteen (18) years.
- (k) Health Hazard – The words “health hazard” shall mean a violation, combination of violations, condition or a combination of conditions identified by the health officer that can injure the person receiving a tattoo or the general public.

## Section 2: Artist Certification

- (a) No person except a duly licensed physician shall engage in the practice of tattooing or act as a tattoo artist unless he or she has a certificate issued by the health officer.
- (b) No operator of any tattoo establishment shall allow a tattoo artist to perform in the facility unless the tattoo artist is the holder of a valid certificate issued under this Article.



- (c) Any person desiring to engage in tattooing or act as a tattoo artist shall submit an application for certification to the health officer in the form prescribed by the health officer which will include a statement that the applicant has received a copy of this Article and has a working knowledge of its content.
- (d) The certificate holder shall be required to show evidence of knowledge of the provisions of this Article including an adequate knowledge of bacteriology and aseptic technique to assure that infection and contagious disease shall not be spread by tattooing practices. The health officer may require a written and/or verbal test to assure that the applicant meets minimum standards as determined by the health officer.
- (e) Certificates will expire on December 31 of each year. The Certification shall be renewed annually.
- (f) An annual fee as per the Erie County Fee Schedule shall be assessed on the recipient of a Certification. The certificate owner must be an employee of a certified tattoo facility prior to the issuance of a tattoo artist certificate. The certificate will indicate the certified facility to which the artist is assigned. The certified artist may apply tattoos only at the certified tattoo facility providing the artist has a certificate that indicates the artist is assigned to that facility. Should the artist wish to work in another certified tattoo facility, the artist must submit a new application to the health officer indicating his or her intentions to work in a different certified tattoo facility. The application must be received by the health officer at least twenty one (21) days prior to the move. The tattoo artist shall be assessed an administrative fee as per the Erie County Fee Schedule for every change. The tattoo artist may not apply tattoos at the new location until he or she has received a new certificate indicating the change in assignments. The tattoo artist may work in more than one certified facility as long as the artist has a valid certificate for each facility.
- (g) The registration certificate of the artist must be prominently posted in the public area of the facility where the artist is working.

### Section 3: Tattoo Establishment Registration

- (a) No person shall operate a tattoo establishment unless such person has registered such shop with the health officer and has received a registration certificate from the health officer.

- (b) No registration certificate shall be issued or renewed unless the shop has been inspected and found to be in compliance with the provisions of these Rules and Regulations.
- (c) The registration certificate must be prominently posted in the public area of the facility.
- (d) The registration certificate shall expire on December 31 of each year. The certificate shall be renewed annually.
- (e) An annual fee as per the Erie County Fee Schedule shall be assessed on the operator of the establishment.
- (f) Plans for new tattoo facilities or existing tattoo facilities that are to be extensively remodeled shall be submitted to the health officer. No constructions or remodeling shall take place until the health officer approves the plans.
- (g) Such plans and specifications shall include, at a minimum, the work room and areas, sinks, counters, storage areas, toilet facilities, sterilizing equipment area and the waiting room.
- (h) An application on a form approved by the health officer and a plan review fee as per the Erie County Fee Schedule shall be submitted along with the plans.

#### Section 4: General Physical Environment

- (a) The tattoo establishment must have adequate light and ventilation and all walls and ceilings shall be kept cleaned. Walls and ceilings are to be painted a light color.
- (b) The floor of the tattoo establishment shall be of impervious material. The floor shall be swept and wet mopped daily. Floors, walls, or ceilings shall not be swept or cleaned while tattooing is in operation.
- (c) There shall be sufficient toilet, urinal, and hand washing facilities accessible to customers.

- (d) There shall be provisions for the proper and safe disposal of all types of waste products. Any material contaminated with blood must be stored in a puncture and leak proof container and disposed of in accordance with Federal, State and Local Laws and acceptable to the Health Officer.
- (e) The building and equipment shall be maintained in a state of good repair at all times. All parts of the establishment and its premises shall be kept clean, neat and free of litter, rubbish and materials not necessary to the operation of the facility.
- (f) Each tattoo establishment shall have a work room that may contain one or more tattoo stations where tattoos are applied. The work room must be separate and apart from the waiting room. Said work room shall be constructed so as to prevent contamination of the work room by activities or people in the waiting area. The construction could include a wall or partition or other construction acceptable to the health officer. This room shall not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only at a tattoo station in said work room.
- (g) Each tattoo station shall have a hand wash facility equipped with hot and cold running water, together with such sinks and basins as may be necessary.
- (h) Each hand washing facility is to be provided with hand cleaning soap or detergent. Individual single service towels, warm air blowers, or clean individual sections of continuous cloth are to be provided. Common towels are prohibited. Conveniently located waste receptacles are to be provided.
- (i) Hand washing facilities, hand washing devices and related equipment are to be kept clean and in good repair.
- (j) Adequate cabinets for the storage of instruments, dyes, pigments, carbon and stencils shall be provided for each artist and shall be maintained in a sanitary manner.
- (k) An adequate number of work tables shall be provided for each tattoo artist. The surface of all work tables shall be constructed of a material which is smooth, light colored, non-absorbent, corrosive-resistant, and easily cleaned, and sanitized.
- (l) Live animals, with the exception of fish in aquariums and guide dogs accompanying blind persons, are prohibited from all areas of the tattoo facility.

## Section 5: Records and Reporting Requirements.

- (a) There shall be proper records maintained by the operator of a tattoo establishment for each person receiving a tattoo.
- (b) A record of each patron shall be prepared prior to any procedure being performed and shall include the date on which the tattoo was applied, the name and signature, address and age of the patron, the design of the tattoo, and its location on the body and the name of the tattoo artist who applied the tattoo.
- (c) The records shall be entered in ink or indelible pencil in a book kept solely for this purpose. This book shall be available at a reasonable time for examination by the health officer and records for each patron shall be preserved for at least (3) years from the date of the tattoo. The signature of the patron shall be in the book.
- (d) The tattoo facility operator is required to keep a record of any complaint or unexpected complication associated with a tattoo applied in the operators tattoo facility. Information concerning the complaint is to be kept as part of the required record for each person who received a tattoo.
- (e) Any tattoo facility operator having actual or constructive knowledge of the occurrence of a complication of a tattoo that resulted in the treatment by a physician or medical facility must be reported to the health officer within 24 hours. The report can be made in person or by telephone

## Section 6: Consent

- (a) It is unlawful to apply a tattoo to a minor.
- (b) It shall be the responsibility of the person applying the tattoo to assure that the person receiving the tattoo is not a minor.
- (c) Identification must be submitted for each person receiving a tattoo. Acceptable identification shall include any current and valid government issued identification card that contains a picture and a date of birth of the person requesting a tattoo. Other forms of identification may be acceptable if specifically approved by the health officer.

- (d) A photocopy of the identification presented must be kept as part of the required record kept for each patron that is being tattooed.
- (e) It shall be unlawful for any tattoo artist to perform any tattooing on an individual who appears to be under the influence of drugs or intoxicating liquor.

#### Section 7: Procedures to be Followed in Tattooing

- (a) There shall be printed or mimeographed instructions approved by the health officer given to each patron or customer on the risks involved in the tattoo requested and possible complications. It must also include the care of the skin after tattooing as a precaution to prevent infection.
- (b) A copy of these instructions shall also be posted in a conspicuous place in the tattoo shop, clearly visible to the person being tattooed.
- (c) Each tattoo artist must wear a clean outer garment.
- (d) No person with any disease in a communicable form or suspected of having such a disease shall engage in tattooing. Such diseases may include but shall not be limited to the acute illness phases of the common cold, influenza, tuberculosis, scabies, impetigo, syphilis, chicken pox, mumps, hepatitis, infection on hands or arms, sore throat or jaundice of the skin.
- (e) The health officer may require a certificate signed by a duly licensed physician stating that the person is free from communicable diseases before permission to resume tattooing is granted.
- (f) Before working on each patron, a tattoo artist shall clean his or her fingernails with an individual nail file and shall thoroughly wash and scrub his or her hands with warm running water, an approved soap, and an individual hand brush.
- (g) He shall not allow his or her hands to dry without the use of towel or other mechanical means
- (h) That portion of the patron's skin to be tattooed shall be prepared by washing with warm water and an approved soap.

- (i) When it is necessary to shave the area to be tattooed, a new disposable razor shall be used. Once used on a patron, the razor must be disposed of. That portion of the patron's skin to be tattooed shall be washed again with warm water and an approved soap after the area wash shaved.
- (j) Following the cleaning and/or shaving of the patron's skin, the tattoo artist shall again wash and scrub his or her hands as described in item (f) above.
- (k) The tattoo artist shall wear single service, disposable gloves when applying a tattoo. The gloves must be properly disposed of once they are used for a patron.
- (l) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an approved germicidal solution which shall be applied with sterile cotton or sterile gauze. When petroleum jelly (petrolatum) is used, it must be listed in the United States Pharmacopeia or National Formulary, and shall be applied to the area to be tattooed and it shall be in a collapsible metal or plastic tube. The application may be spread by the use of sterile gauze but not directly with the fingers.
- (m) The stencil used by a tattoo artist for transferring the design to the skin shall be thoroughly cleaned and rinsed in an EPA-approved or hospital-grade germicidal solution for at least twenty (20) minutes and then it shall be dried with sterile gauze or in the air before use.
- (n) A media, such as deodorant or similar product, used to transfer a design from a stencil, paper or any other material, must be properly prepared prior to applying on the customer receiving a tattoo. This preparation could include rubbing the surface of the media with a clean cloth that has been soaked in a sanitizing solution, scraping off the surface of the media with a sanitized cutting instrument or any other method approved by the health officer.

## Section 8: Dyes and Pigments

- (a) In preparing dyes or pigment to be used by a tattoo artist, only nontoxic and sterile material shall be used. Single-service or individual portions of dyes or pigments in clean, sterilized individual container or single-service containers must be used for each person.
- (b) After tattooing, the remaining unused dye or pigment in the single-service or individual containers must be discarded.

- (c) All dyes or pigment used in tattooing shall be made for tattooing purposes only or from batches certified under the provisions of Parts 70 and 71, Food, Drug and Cosmetics Act. (21 USC 301 et seq.). Tattooing with any other product is a violation of this Code.

## Section 9: Sterilization

- (a) A set of individual single-service, sterilized needles and sterilized tubes and bars shall be used by a tattoo artist for each new patron.
- (b) Tubes and bars may be reused only if they are manufactured to be reused, free of any imperfections, have been properly cleaned in a germicidal solution and sterilized as required in this code.
- (c) A sufficient number of sterilized needles, tubes and bars must be on hand to meet the needs for the entire day or night operation.
- (d) Sterilization shall be accomplished by holding in an approved autoclave for twenty (20) minutes at (15) pounds pressure at a temperature of 250 degrees F or 121 degrees C. An acceptable gauge or gauges [indicator] shall be used to show that the proper temperature and pressure has been reached in the autoclave.
- (e) No rusty or faulty needles shall be used for tattooing. All needles and instruments after sterilization shall be handled and stored in a cabinet in such a manner to prevent being contaminated.
- (f) The complete needle, needle bar and tube of the tattoo machine shall be cleaned, properly packaged, and sterilized in an autoclave before each use. The package containing the sterilized equipment must have the date of sterilization. The person who operated the autoclave must initial each package. Instruments not used within fourteen (14) days of sterilization must be repackaged and sterilized prior to use.
- (g) The autoclave shall be operated, cleaned and maintained according to manufacturer's instructions. A copy of the manufacturers recommended procedures for the operation of the autoclave must be available for inspection by the health officer.
- (h) The operator of each tattoo facility shall demonstrate, prior to use, that each autoclave used in the facility is capable of proper sterilization. Testing shall be performed in each calendar quarter during which the establishment operates.

Biological indicators such as spore strips or spore solutions shall be used and verified through an independent laboratory. The name and serial number of the autoclave must appear on the results of each test. The testing laboratory's written guidelines for the proper handling and placement of the biological indicator shall be readily available for inspection by the health officer. Results of the spore test records shall be retained for a period of three (3) years for every autoclave tested and shall be available to the health officer upon request.

- (i) Autoclaves that failed testing shall immediately be taken out of service. Any unused equipment that went through a sterilization process in an autoclave that failed testing must be repackaged and sterilized in an approved autoclave.
- (j) Pre sterilized, single service equipment will be accepted if there is assurances from the supplier that the equipment has been sterilized following generally accepted and verifiable methods acceptable to the health officer. Any reuse of items intended to be single service is prohibited.

#### Section 10: After Care of Tattoo

- (a) The completed tattoo shall be washed with a piece of sterile gauze or sterile cotton saturated with an approved germicidal solution. It shall be allowed to dry.
- (b) After drying, an anti-bacterial ointment shall be applied from a collapsible metal or plastic tube. The entire area may be covered with a piece of sterile dressing, which may, in turn, be covered with a piece of tissue and fastened to the site with an approved type of adhesive.

#### Section 11: Severability

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.



## Section 12: Certificates and Inspections

- (a) Access – The permit issuing official or his designated representative is to be permitted access for purposes of inspection at all times while the tattoo establishment is in operation whether open to the public or not. Refusal of admittance, after proper identification, is cause for action to obtain certification revocation and an order to close.
- (b) Certificates are non-transferable from one owner or operator to another, or from one establishment location to another, or from one tattoo artist to another. The tattoo artist must be able to produce a valid certificate when engaging in the act of tattooing.
- (c) Inspection – The permit issuing official or his designated representative is to make inspections of each tattoo establishment within his jurisdiction from time to time and not less than once during the term of each certificate. During each inspection, violations of this Article are to be recorded on an inspection report form acceptable to the health officer. A copy of the inspection report is to be delivered to the person in charge at the completion of the inspection.
- (d) The person in charge is the individual present in a tattoo establishment who is the apparent supervisor of the establishment at the time. If no individual is the apparent supervisor, then any employee present is the person in charge.

## Section 13: Enforcement

- (a) Operation of a tattoo establishment without a valid certificate is a violation of this Article. The health officer or his designated representative may order any tattoo establishment or operation in his jurisdiction operating without a valid certificate to close and cease all tattoo operations immediately and to remain closed until the establishment or operation has obtained and displays a valid certificate.
- (b) For serious, repeated or persistent violations of any of the requirements of the Article or for interference with the health officer or his designated representative in the performance of his duties, the certificate may be revoked after notice and an opportunity for a hearing has been provided by the health officer.
- (c) The health officer may suspend a certificate and order the immediate cessation of tattoo operations within his jurisdiction when, in the opinion, continued operation

is an imminent health hazard to public health. Any person so ordered is to comply immediately and within 15 days is to be provided with an opportunity to be heard and to present proof that continued operation does not constitute a danger to the public health.

- (d) A person applying a tattoo without a valid certificate issued by the health officer is in violation of this Article. The tattoo establishment operator who allows a person to apply a tattoo without a valid certificate will be subject to enforcement as described in subsection (a) of this section.
- (e) Suspension of certificates- Certificates may be suspended temporarily by the health officer, after notice and an opportunity to be heard, for failure of the certificate holder to comply with the requirements of this Article, or with any lawful notice or order issued by the health officer or his designated representative.
- (f) Closure- When action is taken to order closure and cessation of operations, the health officer or his designated representative is to:
  - (1) Conspicuously post a notice or placard at each entrance of the establishment stating the existence of such order and the authority for such order. This order is not to be concealed, mutilated or altered by any person or removed without permission of the health officer.
  - (2) Publish notice of the order with the reasons for the order in one or more newspapers in the County or city in which the tattoo establishment is located.
- (g) Hearings- The hearings provided for in this section are to be conducted by the health officer or his designated hearing officer and shall be conducted following the procedures used to adjudicate other violations of Erie County Sanitary Code, New York State Sanitary Code and the New York State Public Health Law.
- (h) Should a tattoo facility that is ordered closed contain more than just the tattoo facility, the operator may either close the entire facility or remove all materials and equipment used for tattooing from the premises while the close order or suspension of the certificate is in effect.

Section 14: Penalty for Violation

Every person, firm, organization or corporation violating any of the provisions of this Article, or any of the orders, rules and regulations made and promulgated in pursuance hereof, after conviction thereof, shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars for each violation.

***The changes to this Article of the Erie County Sanitary Code including the amendments of 2005 become effective July 1, 2006.***